BRIEF IN SUPPORT OF PETITION.

I.

The road is more than an electrically operated interurban railroad, i. e., it is not an electrically operated interurban railroad falling within the statutory exception to the applicability of Chapter VIII, Section 77, as a reorganization vehicle.

In *United States* v. *Chicago North Shore and Milwaukee Railroad Company,* 288 U. S. 1, the status of the road arose under Section 20a of the Interstate Commerce Act, which exempts electrically operated interurban railroads, unless "part of *a* general *steam* railroad system of transportation." (All italics in this brief are ours.)

The questions involved in *Sprague* v. *Woll,* 122 Fed. (2d) 128, arose under the Carriers' Taxing Act (45 U. S. C. Sec. 261), the Railroad Retirement Act (45 U. S. C. Section 228a), and the Railway Labor Act (45 U. S. C. Sections 151-163), under each of which acts the definitions of railroads or carriers subject thereto are identical; they exclude interurban electric railways, unless operated "as part of *a* general *steam* railroad system of transportation," but provide that the exclusory language shall not be deemed to exclude "any part of *the* general steam railroad system now or hereafter operated by any other motive power." The exclusory language in the case at bar, as previously pointed out, is in Chapter VIII, Section 77 (m) against an interurban electric railway "which is not operated as a part of *a* general railroad system of transportation, or which does not derive at least fifty per cent of its revenue from freight."

When this Court held the Road an interurban under Section 20a of the Interstate Commerce Act, it is apparent from the language of the opinion (288 U. S. 1) that it did so upon these considerations only:

(a) That the Interstate Commerce Commission had never objected to the failure to submit securities issued to it for approval until many millions of dollars' worth had been in the hands of the public, and that, therefore, the rule of administrative construction was deemed applicable.

(b) That except for the necessity of applying this rule in order to prevent injustice to the investing public, the Court would have been inclined (the opinion twice emphasizing the closeness of the question) to rule on the record then before it that the road was either part of *a* general *steam* railroad system of transportation, or, in any event, was "more" than an interurban.

Changes in the Road's operation and additional testimony in the present record tend more strongly toward steam railroad definitions. While Your Honors commented in 288 U. S. 1 on the fact that "grades are heavier than those customary with steam railroads, and some of the curves are of so short a radius as not to permit the passage of a steam locomotive," the instant record shows that such conditions are not applicable to the main through route (see map, R. 618) through the Skokie Valley (R. 259, 297-300, 303, 321). While this Court found that the road had seven small type electric locomotives and was unable to haul freight trains of the size usually employed by steam railroads, the present record shows trains as long as fifty cars are hauled on the Road, and in some instances as many as sixty-five (R. 563). While this Court found that the North Shore maintained no facilities for receipt or delivery of carload freight at its termini at Chicago and Milwaukee,

and could not accomplish the interchange of such freight at either, the present record shows affirmatively that carload freight can be handled and interchanged between the two cities (R. 259, 265, 276, 306, 308-11, 352, 424-8 and 455).

While this Court found that in 1930 seventy-eight per cent of all traffic was interline, providing only forty-two per cent of the Road's freight revenue, by 1937 the present record shows the proportion of freight revenues from interchange business with other lines rose from forty-two per cent to nearly seventy-two per cent, and the proportion of freight tonnage so interchanged from seventy-eight per cent to ninety-three per cent (R. 463).

Since the record last before Your Honors, the three Electroliners have been added (see time table, R. 605).

The Road meets the requisites for classification as something "more" than an interurban laid down in *Texas Electric Railway Company* v. *Eastus, et al.*, 25 Fed. Supp. 825, affirmed without opinion in 308 U. S. 511 (under the Railway Labor Act), *i. e.*, the North Shore is engaged in the general transportation of freight, even though its freight is less than its passenger revenue; it handles the bulk of such freight in standard steam railroad equipment; it freely interchanges freight with steam railroads and participates with them in standard rates; and transports a considerable portion of its freight in interstate commerce.

The Company offers, by its time tables and otherwise (R. 605, 472), through passenger service, including railroad and Pullman tickets to any place on the Continent, through baggage checking service, telegraphic service to all parts of the country for delivery of tickets, and complete travel tour information and service. With the addition of the Electroliners it furnishes luxury diner-lounge and tavern-

lounge cars, as shown at Record 605 and 606—far surpassing anything known to "interurban" transportation.

This Court found the problem of classification of the Road "not free from difficulty" in 1932. It must seem much clearer now, with no investors' rights involved, nor any question of administrative construction, that the Road, though doing an interurban business (just as does a railroad running trains from Washington to Philadelphia), is actually "more" than an interurban within the statutory definition.

Further, this Court denied certiorari on the application to review in *Sprague* v. *Woll,* 122 Fed. 2d 128. True, that case came to the Circuit Court of Appeals from the Commerce Commission, and all that the Court was required to find was that there was "substantial evidence" to justify the Commission's conclusions. That same record, with the exception of the few pages added here, constitutes the record in this Court in this case. It is not apparent why the District Court, on the same printed record, reached a different conclusion in this case than did the Commerce Commission in its report in the previous case (R. 557). If substantial evidence existed in *Sprague* v. *Woll,* 122 Fed. 2d 128 to support the finding that the Road was part of *the* general *steam* railroad system of transportation, the same testimony *must* show conclusively that the Road is something more than an interurban.

II.

The Road is a part of a general railroad system of transportation.

Under Chapter VIII (Sec. 77) an electrically operated road which is part of "a general railroad system" of transportation is not within the exemption of electric interurbans from the applicability of the Act. The same language appears under Section 20a of the Interstate Commerce Commission Act involved in the first case before this Court on the subject, except that instead of the words "a general railroad system," the words used in the Interstate Commerce Act are "a general *steam* railroad system."

If this Court in deciding *United States* v. *Chicago North Shore and Milwaukee Railroad Company,* 288 U. S. 1 had any doubt about whether the Road was part of *a* general railroad system of transportation (treating the word "system" as having the definition given it by the Circuit Court of Appeals in the case at bar, R. 668), it did not voice such doubt in its opinion. If, as must be inferred from the Court's opinion in that case, no question existed as to whether the Road qualified as part of a "railroad system," but that the Court believed the Road not part of a "*steam* railroad system," we assert that the omission of the word "steam" from the definition in Chapter VIII of the Bankruptcy Act is of great importance. When this Court impliedly approved, by the denial of certiorari, the Circuit Court of Appeals finding in *Sprague* v. *Woll,* 122 Fed. 2d 128 that the Road was part of *the* general steam railroad system of transportation (which meets neither of the statutory definitions under those acts, which are "part of *a* general *steam* railroad system of transportation," or of "*the* National transportation system"), it would seem

that some weight should be given to that finding in considering whether under Chapter VIII, Section 77 of the Bankruptcy Act the Road was part of *a* general railroad system of transportation.

We contend, therefore, that the definition by the Circuit Court of Appeals of a system as referring to the Pennsylvania system, the New York Central system, etc., is not in conformity with the previous decisions applicable to this Road; but if it is necessary to use such a technical definition of system, the North Shore itself may be deemed to be a railroad "system"—it owns two subsidiary companies (R. 17 and 18). Had the Court in 288 U. S. 1 given to the word "system" the meaning given by the Circuit Court of Appeals in the instant case (R. 668) there could have been in the Court's mind none of the doubt expressed in the opinion, for this Road never claimed to be part of any other specifically named "system." If, as seems more likely, the word "system" as used in the statute applies to groups of roads loosely described as the eastern roads, the western roads, the southern roads, etc., this Road is part of the mid-western railroad transportation system, with terminals in two of the large cities of the country, and with a large number of other communities served between the two terminals, including the vast camps of the armed forces at Fort Sheridan and Great Lakes (R. 619). It advertises connections with all the great railroads of the country which have Chicago terminals (R. 627).

It is true that Chapter VIII, Section 77 contains specific language, the effect of which is to say that an electrically operated interurban is not an interurban, if fifty per cent (50%) or more of its revenue comes from freight. This does not mean, as suggested by the Circuit Court of Appeals opinion, that an independently owned electrically operated railroad must be only an interurban if its freight revenue is *less* than fifty per cent (50%) of its total.

Conceivably, a high-speed electrically operated passenger road might run from coast to coast, and certainly would not be classified as interurban, whether or no it carried *any* freight.

The Road's position as to the jurisdiction of State or Federal Commerce Commissions should be definitely settled. As the law now stands, after the Circuit Court of Appeals decision sought to be reviewed here, the Road is an electrically operated interurban railroad for the purpose of the approval of its securities under Section 20A of the Interstate Commerce Act, it is part of *the* general *steam* railroad system of transportation under the Carriers' Taxing Act, the Railway Labor Act, and the Railroad Retirement Act, and it is an electrically operated interurban not part of *a* general railroad system of transportation, for the purposes of reorganization under Chapter VIII, Section 77 of the Bankruptcy Act.

Respectfully submitted,

VINCENT D. WYMAN,
Counsel for Petitioners.

AUSTIN L. WYMAN,
DANIEL P. NAGLE,
Of Counsel.